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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/467,938	12/21/1999	JOHN J. CURRO	7897	2982

27752 7590 05/18/2004

THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
WINTON HILL TECHNICAL CENTER - BOX 161  
6110 CENTER HILL AVENUE  
CINCINNATI, OH 45224

EXAMINER
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BEFUMO, JENNA LEIGH

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/467,938	<b>Applicant(s)</b> CURRO ET AL.	
	<b>Examiner</b> Jenna-Leigh Befumo	<b>Art Unit</b> 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 February 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10-15 and 19-31 is/are pending in the application.
- 4a) Of the above claim(s) 28-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-15, 19-23, 26 and 31 is/are rejected.
- 7) ☒ Claim(s) 24, 25 and 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The Amendment submitted on February 9, 2004, has been entered. Claims 1 – 9 and 16 – 18 have been cancelled. Claims 15, 19, 22, and 23 have been amended and claim 31 has been added. Therefore, the pending claims are 10 – 15 and 19 – 31. Claims 28 – 30 are withdrawn from consideration as being drawn to a nonelected invention.
2. The Affidavit under 37 CFR 1.132 filed October 2, 2003 is insufficient to overcome the rejections based upon Srinivasan et al. (5,567,501), Palumbo (WO 96/10979), or Kielpikowski et al. (4,842,596) as set forth in the last Office action because: The affidavit did not include all the described figures and therefore was incomplete. Figure 1, described as a bonded nonwoven fabric with a bond site aspect ratio of 1:1, was the same picture as Figure 3, described as a bonded nonwoven fabric with a bond site aspect ratio of 10:1. Further, the Examiner's copy of Figure 5 has poor resolution and the apertures and bond sites, or lack thereof, cannot be clearly discerned in the picture. Thus, the figures could not be compared to each other, or establish that the aspect ratio of the bond site is critical to the nonwoven structure and demonstrate unexpected results for an aspect ratio of at least 3.

Additionally, the Affidavit refers only to the general invention in the present application and not to the product produced by the prior art or the scope of the individual claims of the application. Thus, the Affidavit is not commensurate in scope with the claims. In other words, the claims recite an apertured nonwoven fabric with three layers where the bond sites have an aspect ratio of 3. However, the Affidavit shows that the aspect ratio is critical to an apertured nonwoven laminates produced by forming bond sites and then applying a force to stretch the

Art Unit: 1771

nonwoven fabric and rupture the bond sites. Since the prior art is produce by a different method, then the evidence that the aspect ratio is critical to the Applicant's method is not commensurate in scope with the claims since the method of forming the apertures is not claimed. Further, the Affidavit is not commensurate in scope with the present claims since the Applicant uses examples having an aspect ratio of 1:1, 5:1, 10:1 and 30:1, while the claims are drawn to an aspect ratio of 3:1. Thus, evidence that a bonded web with bond sites having an aspect ratio of 5:1 produces apertures only at the bond sites is not sufficient to demonstrate that a bonded web with bond sites having an aspect ratio of 3:1 would only produce apertures at the bond sites as well. Therefore, the Affidavit is not sufficient to overcome the rejections.

3. The drawings corrections and the amendments to the specification are sufficient to overcome the objections to the drawings set forth in sections 1 – 3 of the previous Office Action.

#### ***Drawings***

4. The drawings were received on October 2, 2003. These drawings are accepted.

#### ***Terminal Disclaimer***

5. The terminal disclaimer filed on October 2, 2003 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Application Number 09/553,641, and 09/553,871 has been reviewed and is accepted. The terminal disclaimer has been recorded.

#### ***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Art Unit: 1771

7. Claims 10 – 15, 17, 19 – 23, 26, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Srinivasan et al.

The features of Srinivasan et al. have been set forth in the previous Office Action. Since claim 15 has been amended to include polymeric film as a material for the third web, this claim is now also rejected by Srinivasan et al. for the reasons of record. Further, since the rejection of record addressed that it was obvious to optimize the size of the bond site, newly added claim 31 is also rejected for the reasons of record.

8. Claims 19 – 23 and 26 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Palumbo for the reasons of record.

9. Claims 19 – 23 and 26 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kielpikowski et al. for the reasons of record.

***Allowable Subject Matter***

10. Claims 24, 25, and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims for the reasons set forth in the previous Office Action.

***Response to Arguments***

11. Applicant's arguments filed October 2, 2003 and February 9, 2004 have been fully considered but they are not persuasive. The Applicant argues that based on the Affidavit provided, the rejections based on Srinivasan et al, Palumbo, and Kielpikowski et al. should be withdrawn. However, as set forth above the affidavit was found insufficient. Particularly, the Affidavit argues that the aspect ratio is critical to the process to produce an aperture nonwoven. The Applicant does not address the structure of the apertured nonwoven as it compares to the

Art Unit: 1771

structure of the apertured nonwoven fabrics taught by the prior art. Changing the size of the aperture in the nonwoven fabric taught by Srinivasan et al, Palumbo, and Kielpikowski et al., would not destroy the invention or produce any unexpected results. Instead, the final product would have different size openings which would effect the amount of air or fluid which is allowed to pass through the nonwoven itself. Further, it has been found that a modification involving a mere change in the size of a component is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). Since the Applicant argues that the bond site aspect ratio is critical to the process of making the nonwoven material, the Applicant would need to include method limitations which in commensurate in scope with the arguments in the affidavit. Therefore, the rejections are maintained.

### ***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

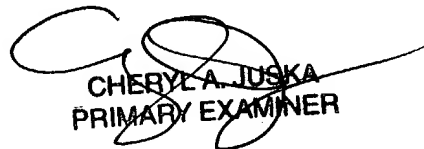
Art Unit: 1771

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jenna-Leigh Befumo  
May 14, 2004



CHERYL A. JUSKA  
PRIMARY EXAMINER